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15 Attorneys for Plaintiff
16 ABBYY USA SOFTWARE HOUSE, INC.

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ABBYY USA SOFTWARE HOUSE, INC.

20 Plaintiff,

21 vs.

22 NUANCE COMMUNICATIONS, INC.

23 Defendant.

Case No: CV 08-1035 MEJ

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED PURSUANT TO L.R. 3-12;
DECLARATION OF GRANT KINSEL**

1 Plaintiff Abbyy USA Software House, Inc. ("Plaintiff") respectfully files this
2 Administrative Motion to Consider Whether Cases Should be Related, and would show the Court
3 the following:

4 1. On June 3, 2008, the case entitled *Nuance Communications, Inc. v. Abbyy*
5 *Software House, et al.*, Case No. CV 08-01097 AHM (FFMX) pending in the United States
6 District Court for the Central District of California (the "Central District Action") was
7 transferred from the Central District to this Court pursuant to Plaintiff's motion. A copy of the
8 Central District's Transmittal Letter is attached to the Declaration of Grant Kinsel as Exhibit "1."

9 2. The Central District Action is a patent infringement action by Nuance
10 Communications, Inc., the Defendant in this action ("Defendant"), against the Plaintiff in this
11 action and other parties. In the Central District Action, Defendant alleges that Plaintiff and other
12 third parties have infringed the same patents upon which Plaintiff seeks declaratory relief in this
13 action.

14 3. On May 13, 2008, Plaintiff and Defendant stipulated to continue the Case
15 Management Conference in this action in light of the pendency of Plaintiff's motion to transfer
16 the Central District Action to this Court. The parties further stipulated that should the Court
17 order the Central District Action transferred to this Court, then the Central District Action should
18 be consolidated with this action. A copy of the Court's order approving the stipulation is
19 attached to the Declaration of Grant Kinsel as Exhibit "2."

20 4. Therefore, the Court should find that the Central District Action is a related case,
21 and consolidate the Central District Action with this matter.

22 Dated: June 5, 2008

FOLEY & LARDNER LLP
GRANT E. KINSEL

23
24
25
26 By: /s/ Grant E. Kinsel
GRANT E. KINSEL
27 Attorneys for Plaintiff
Abbyy USA Software House, Inc.
28

Declaration of Grant Kinsel

I, Grant Kinsel, declare:

1. I make this declaration on the basis of personal knowledge and if called to testify as a witness, I would and could testify competently hereto.

2. I make this declaration in support of Plaintiff's Administrative Motion to Consider Whether Cases Should be Related.

3. Attached as Exhibit "1" is a true and correct copy of the United States District Court for the Central District of California's transmittal letter transferring the case captioned *Nuance Communications, Inc. v. Abby Software House, et al*, Case No. CV 08-01097 AHM (FFMX) ("Central District Action") to this Court pursuant to Plaintiff's motion to transfer venue.

4. Attached as Exhibit "2" is a true and correct copy of the stipulation and order continuing the Case Management Conference in this case in which Nuance Communications, Inc. ("Defendant") stipulated to consolidate the Central District Action with this case.

5. On June 5, 2008, I spoke with counsel for Lexmark International, one of the named defendants in the Central District Action, who stipulates that the Central District Action is a related case, and should be consolidated with this matter. The other named defendant in the Central District Action, Abby Software House, did not appear in the Central District Action.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed June 5, 2008, at Los Angeles, California.

/s/ Grant Kinsel

PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **555 South Flower Street, Suite 3500, Los Angeles, CA 90071-2411**.

On **June 5, 2008**, I served the foregoing document(s) described as: **ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO L.R. 3-12; DECLARATION OF GRANT KINSEL** on the interested parties in this action as follows:

 X BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Terry Kearney
Julie M. Holloway
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304-1050

Attorneys for Defendant
Nuance Communications, Inc.

Tung-On Kong
WILSON SONSINI GOODRICH & ROSATI, PC
One Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105-1123

Attorneys for Defendant
Nuance Communications, Inc.

Eugene A. Feher
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Attorneys for Third-Party
Lexmark International, Inc.

 X BY EXPRESS SERVICE CARRIER (**Via Overnight Courier Service**)

 X I placed the envelope(s) in a box or other facility regularly maintained by Federal Express, or delivered the document(s) to a courier or driver authorized by the express service carrier to receive document(s), in an envelope(s) or package designated by the express service carrier, with delivery fees paid or provided for, at **Los Angeles, California**.

 X I am readily familiar with the firm's practice for collection and processing of correspondence for delivery by Federal Express: collected packages are picked up by an express carrier representative on the same day, with the Airbill listing the account number for billing to sender, at **Los Angeles, California**, in the ordinary course of business. I placed the envelope(s) in an envelope or package designated by the express service carrier for collection and processing for express service delivery on the above date following ordinary business practices.

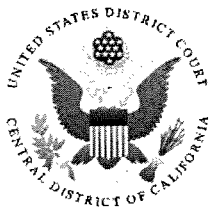
 X Executed on **June 5, 2008**, at **Los Angeles, California**.

 X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Grant Kinsel

Grant Kinsel



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

SHERRI R. CARTER
District Court Executive and
Clerk of Court

To: Clerk, United States District Court
Northern District of California
450 Golden Gate Avenue, Box 36060
San Francisco, CA 94102-3434

Re: Transfer of our Civil Case No. CV 08-01097 AHM (FFMx)
Case Title: Nuance Communications Inc., -v- Abbyy Software House, et al.,

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our file:

- ☐ Original case file documents are enclosed in paper format.
☒ Electronic Documents are accessible through Pacer.
☐ Other: _____

Very truly yours,

Clerk, U.S. District Court

Date: 6/4/2008

By J. Lam (213) 894-7982
Deputy Clerk

cc: *All counsel of record*

TO BE COMPLETED BY RECEIVING DISTRICT

Please acknowledge receipt via e-mail to appropriate address listed below and provide the case number assigned in your district:

- ☐ CivilIntakecourtdocs-LA@caed.uscourts.gov (Los Angeles Office)
☐ CivilIntakecourtdocs-RS@caed.uscourts.gov (Riverside Office)
☐ CivilIntakecourtdocs-SA@caed.uscourts.gov (Santa Ana Office)

Case Number: _____

Clerk, U.S. District Court

Date: _____

By _____
Deputy Clerk

GRANT KINSEL (CA BAR NO. 172407)
gkinsel@foley.com
FOLEY & LARDNER LLP
555 SOUTH FLOWER STREET, SUITE 3500
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TELEPHONE: 213.972.4500
FACSIMILE: 213.486.0065

Attorneys for Defendant
ABBYY USA SOFTWARE HOUSE, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ABBYY USA SOFTWARE HOUSE,
INC.

Plaintiff,

vs.

NUANCE COMMUNICATIONS, INC.

Defendant.

Case No: CV 08-1035 MEJ

**STIPULATION TO CONTINUE
CASE MANAGEMENT
CONFERENCE AND RESPONSE
DATE**



1
2 ABBYY USA Software House, Inc. (“Abbyy USA”) and Nuance
3 Communications, Inc. (“Nuance”) stipulate with respect to the following facts:

4 1. ABBYY USA Software House, Inc. (“Abbyy USA”) filed this action
5 on February 20, 2008.

6 2. Defendant Nuance Communications, Inc. (“Nuance”) filed an action
7 against ABBYY USA, ABBYY Software House and Lexmark International, Inc.
8 on February 19, 2008 in the United States District Court for the Central District of
9 California (the “Central District Action”). The Central District Action is pending
10 before the Hon. A. Howard Matz.

11 3. Abbyy USA has moved to transfer venue of the Central District
12 Action to this Court. A hearing on Abbyy USA’s motion was originally set for
13 May 12, 2008. On May 8, 2008, the Court took off-calendar and under submission
14 Abbyy USA’s motion.

15 4. Abbyy USA served the complaint in this action on May 6, 2008.

16 5. Pursuant to the Court’s Case Management Schedule, the Court has set
17 May 29, 2008 as the Case Management Conference.

18 6. The parties believe that if the Central District Action is transferred to
19 this Court as requested by Abbyy USA, then it should be consolidated with this
20 action, and if the Central District Action is not transferred, this action will be
21 dismissed without prejudice.

22
23 WHEREFORE, the parties stipulate as follows:

24 To continue the Case Management Conference from May 29, 2008 to July
25 10, 2008 to provide the Central District with an opportunity to rule on Abbyy
26 USA’s Motion to Transfer Venue;

27 To continue Nuance’s last day to respond to the Complaint until twenty days
28 after the issuance of a ruling from the Court in the Central District Action as to

whether Abbyy USA's Motion to Transfer Venue is granted or denied.

SO STIPULATED:

Dated: May 13, 2008

FOLEY & LARDNER LLP
GRANT E. KINSEL

By: /s/ Grant Kinsel _____
GRANT E. KINSEL
Attorneys for Plaintiff
Abbyy USA Software House, Inc.

Dated: May 13, 2008

WILSON SONSINI GOODRICH &
ROSATI, P.C.
TUNG-ON KONG

By: /s/ Tung-On Kong _____
TUNG-ON KONG
Attorneys for Defendant
Nuance Communications, Inc.

PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **555 South Flower Street, Suite 3500, Los Angeles, CA 90071-2411**.

On **March 19, 2008**, I served the foregoing document(s) described as: on the interested parties in this action as follows:

BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Terry Kearney
Julie M. Holloway
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304-1050
Attorneys for Plaintiff
Nuance Communications, Inc.

Tung-On Kong
WILSON SONSINI GOODRICH & ROSATI, PC
One Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105-1123
Attorneys for Plaintiff
Nuance Communications, Inc.

Eugene A. Feher
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attorneys for Defendant
Lexmark International, Inc.

BY MAIL

I placed the envelope(s) with postage thereon fully prepaid in the United States mail, at **Los Angeles, California**.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; the firm deposits the collected correspondence with the United States Postal Service that same day, in the ordinary course of business, with postage thereon fully prepaid, at **Los Angeles, California**. I placed the envelope(s) for collection and mailing on the above date following ordinary business practices.

BY FACSIMILE

I transmitted the document(s) by facsimile transmission from a facsimile transmission machine, at **Los Angeles, California**, with the telephone number, **213.486.0065**, to Click and Type Name whose facsimile transmission telephone number is Click and Type Number .

1 I am readily familiar with the firm's practice for delivery by facsimile
 2 transmission: the firm transmits the document(s) from a facsimile
 3 transmission machine to the person to be served. I placed the
 4 document(s) in the place designated by the firm, at **Los Angeles,**
 5 **California**, for facsimile transmission to Click and Type Name whose
 6 facsimile transmission telephone number is Click and Type Number on
 7 the above date following ordinary business practices. The document(s)
 8 was transmitted from a facsimile transmission machine with the
 9 telephone number of **213.486.0065**.

10 The facsimile transmission was reported as complete without error by a
 11 transmission report, issued by the facsimile transmission machine upon which
 12 the transmission was made, immediately following the transmission.

13 BY HAND DELIVERY. I delivered the envelope(s) **by hand** to addressee(s).

14 BY EXPRESS MAIL (Via United States Postal Service)

15 I deposited the envelope(s) in a facility regularly maintained by the United
 16 States Postal Service for receipt of Express Mail, with Express postage
 17 fully prepaid.

18 I am readily familiar with the firm's practice for collection and processing
 19 of correspondence for Express Mail; the firm deposits the collected
 20 correspondence with a facility regularly maintained by the United States
 21 Postal Service for receipt of Express Mail that same day, in the ordinary
 22 course of business, with Express Mail postage thereon fully prepaid, at
 23 **Los Angeles, California**. I placed the envelope(s) for collection and
 24 Express Mailing on the above date following ordinary business practices.

25 BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)

26 I placed the envelope(s) in a box or other facility regularly maintained by
 27 Click and Type Name of Courier, or delivered the document(s) to a
 28 courier or driver authorized by the express service carrier to receive
 document(s), in an envelope(s) or package designated by the express
 service carrier, with delivery fees paid or provided for, at **Los Angeles,**
California.

I am readily familiar with the firm's practice for collection and processing
 of correspondence for delivery by Click and Type Name of Courier :
 collected packages are picked up by an express carrier representative on
 the same day, with the Airbill listing the account number for billing to
 sender, at **Los Angeles, California**, in the ordinary course of business. I
 placed the envelope(s) in an envelope or package designated by the
 express service carrier for collection and processing for express service
 delivery on the above date following ordinary business practices.

Executed on **March 19, 2008**, at **Los Angeles, California**.

I declare under penalty of perjury under the laws of the State of California
 that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this
 court at whose direction the service was made.

Click and Type Name

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12 Palo Alto, CA 94304-1125
13 Telephone: (650) 856-3700
14 Facsimile: (650) 856-3710

15 Attorneys for Defendant
16 ABBYY USA SOFTWARE HOUSE, INC.

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ABBYY USA SOFTWARE HOUSE, INC.

20 Plaintiff,

21 vs.

22 NUANCE COMMUNICATIONS, INC.

23 Defendant.

Case No: CV 08-1035 MEJ

**[PROPOSED] ORDER ON
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

1 Plaintiff Abbyy USA Software House, Inc.'s ("Plaintiff") Administrative Motion to
2 Consider whether Cases Should be Related having been considered by the Court along with any
3 oppositions to said motion, and good cause appearing therefor, the Court orders that the matter
4 *Nuance Communications, Inc. v. Abbyy Software House, et al*, United States District Court,
5 Central District of California Case No. CV 08-01097 AHM (FFMX) ("Central District Action")
6 transferred to this Court pursuant to order of the Court on June 3, 2008, is a related to this matter,
7 and shall be consolidated with this matter. Nuance Communications, Inc. ("Defendant") may
8 file its answer and counterclaims, and any third party claims, within twenty days following the
9 date of this order.

10
11 Dated: _____

U.S. District Court Judge

PROOF OF SERVICE

I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and not a party to this action; my current business address is **555 South Flower Street, Suite 3500, Los Angeles, CA 90071-2411**.

On **June 5, 2008**, I served the foregoing document(s) described as: **[PROPOSED] ORDER ON ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED** on the interested parties in this action as follows:

BY THE FOLLOWING MEANS:

I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Terry Kearney
Julie M. Holloway
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304-1050

Attorneys for Defendant
Nuance Communications, Inc.

Tung-On Kong
WILSON SONSINI GOODRICH & ROSATI, PC
One Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105-1123

Attorneys for Defendant
Nuance Communications, Inc.

Eugene A. Feher
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Attorneys for Third Party
Lexmark International, Inc.

X BY EXPRESS SERVICE CARRIER (**Via Overnight Courier Service**)

X I placed the envelope(s) in a box or other facility regularly maintained by Federal Express, or delivered the document(s) to a courier or driver authorized by the express service carrier to receive document(s), in an envelope(s) or package designated by the express service carrier, with delivery fees paid or provided for, at **Los Angeles, California**.

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X Executed on **June 5, 2008**, at **Los Angeles, California**.

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Grant Kinsel
Grant Kinsel